

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Xin Tao,
Plaintiff

v.
Ryan Murphy, et al.,
Defendants

Case No.: 2:25-cv-00149-JAD-MDC

Order Denying Motion to Compel Arbitration

[ECF No. 9]

Xin Tao owns a rental home in Las Vegas, Nevada, that he leased to Ryan Murphy for a year term. When Murphy turned around and rented it out on Airbnb's short-term rental platform, the City of Las Vegas fined Tao for violating its short-term rental prohibition. So Tao sued Murphy and Airbnb, claiming that Murphy's business use of the property happened without Tao's knowledge or consent and that Airbnb bears responsibility for not safeguarding against such unauthorized use.

It just so happens that Tao had created his own accounts with Airbnb for purposes unrelated to Murphy's activity, and those account terms contain an arbitration provision and a delegation clause. Airbnb now moves to compel arbitration of this dispute based on those unrelated agreements. But this dispute lacks any causal nexus to the agreements Tao has with Airbnb, and that disconnect prevents this court from finding that an agreement to arbitrate this controversy was formed or that the agreement falls within the ambit of the Federal Arbitration Act. So I deny the motion to compel arbitration.

23

Background

A. Murphy leases Tao's home and then rents it out on Airbnb's short-term-lease platform.

Tao and Murphy entered into a long-term lease agreement beginning in November 2021 prohibited short-term rentals of Tao's property.¹ Tao alleges that, unbeknownst to him, my listed the home for short-term rent on Airbnb's platform using Murphy's own Airbnb account.² Tao claims that he only discovered this activity when he found a code-enforcement notice posted on his property stating that the City of Las Vegas intended to levy a \$180,000 fine against him.³ He sues Murphy and Airbnb on several contract and tort theories.⁴

B. The terms of use for Tao's own Airbnb accounts contain an arbitration agreement with a delegation clause.

Tao had also created his own Airbnb accounts—once in 2016 to stay as a guest at a
party that someone else rented through Airbnb, and another time when Tao briefly attempted
fall of 2021 to let this home out to Airbnb customers on a short-term basis.⁵ In order to
both accounts, Tao “agree[d] to Airbnb’s Terms of Service” and certain other policies.⁶
terms of service include an arbitration agreement in which

“[the user] and Airbnb mutually agree that any dispute, claim or controversy arising out of or relating to these Terms or the applicability, breach, termination, validity, enforcement or

¹ ECF No. 1-2 at 15.

² *Id.* at ¶¶ 8-13.

³ *Id.* at ¶¶ 20–22.

⁴ See generally *id.*

²³ ⁵ ECF No. 9-1 at ¶¶ 9–14; ECF No. 17 at 7–8.

⁶ ECF No. 9-1 at ¶¶ 5–14.

1 interpretation thereof, or any use of the Airbnb Platform, Host
 2 Services, or any Content . . . will be settled by binding individual
 3 arbitration.”⁷

4 The terms also contain a delegation clause that states that “[i]f there is a dispute about whether
 5 this Arbitration Agreement can be enforced or applies to [the] Dispute, [the user] and Airbnb
 6 agree that the arbitrator will decide that issue.”⁸

7 **C. Airbnb moves to compel arbitration under the terms of Tao’s accounts and
 8 contends that arbitrability must be decided by an arbitrator.**

9 Airbnb moves to compel Tao to arbitrate this case.⁹ It contends that because Tao agreed
 10 to the terms of service with a delegation clause, “a court must honor the parties’ contractual
 11 decision and refer the matter to arbitration without exception and without determining
 12 arbitrability.”¹⁰ And even if this court were to undertake the arbitrability determination on its
 13 own, Airbnb argues, arbitration must be compelled because Tao’s account terms cover this
 14 dispute as it “relates” to Airbnb’s platform.¹¹ Tao responds that the clause is unconscionable and
 15 that his claim does not arise out of the terms of service because “[t]he dispute in the Complaint is
 16 . . . completely unrelated and irrelevant to [Tao’s own] Airbnb account.”¹² At the court’s
 17 request, the parties provided supplemental briefing on whether a nexus between the arbitration-
 18 clause-containing contract and the dispute is required for the court to compel arbitration.¹³

19 ⁷ *Id.* at ¶¶ 15–16.

20 ⁸ *Id.*

21 ⁹ ECF No. 9.

22 ¹⁰ ECF No. 22 at 3.

¹¹ *Id.* at 5.

¹² ECF No. 17 at 2–5.

¹³ ECF No. 34.

Discussion

A. Framework of the Federal Arbitration Act

Congress enacted the Federal Arbitration Act (FAA) in “response to hostility of American courts to the enforcement of arbitration agreements,”¹⁴ so the FAA “embodies the national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts.”¹⁵ “The FAA provides that any arbitration agreement within its scope shall be valid, irrevocable, and enforceable,” and it empowers federal district courts to issue an order compelling arbitration consistent with the agreement.¹⁶ But the court’s authority derives from the FAA.¹⁷ So without that statutory authorization or an alternative basis in state law, a federal court lacks the power to stay litigation and compel arbitration.¹⁸

11 The FAA does not extend this power to every case. Section 2 of the FAA—the FAA's
12 coverage provision¹⁹—defines the outer limits of the act's reach: it applies to any arbitration
13 clause in a contract involving a commercial transaction.²⁰ Other sections of the FAA exclude

¹⁵ *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001).

¹⁶ ¹⁵ *Buckeye Check Cashing, Inc. v. Cardega*, 546 U.S. 440, 443 (2006).

¹⁶ *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000) (cleaned up).

¹⁷ *In re Van Dusen*, 654 F.3d 838, 844 (9th Cir. 2011) (“The district court may not compel arbitration pursuant to Section 4 unless the ‘agreement for arbitration’ is of a kind” covered by “Sections 1 and 2.”); *Oliveira v. New Prime, Inc.*, 857 F.3d 7, 15 (1st Cir. 2017), *aff’d*, 586 U.S. 105 (2019) (“When the only basis for seeking arbitration in federal court is the FAA, the district court can grant the requested relief only if it has authority to act under the FAA.”).

¹⁸ *Harden v. Roadway Package Sys., Inc.*, 249 F.3d 1137, 1141 (9th Cir. 2001) (“Since the FAA is inapplicable to this case, the district court lacked the substantive legal authority to compel arbitration.”); *Steines v. Westgate Palace, L.L.C.*, 113 F.4th 1335, 1342 (11th Cir. 2024) (“In the absence of the statutory authority found in the FAA, the district court would lack the power to stay the litigation in its own court and compel arbitration.”).

²³ ¹⁹ *Cir. City Stores*, 532 U.S. at 111.

²⁵ ²⁰ *Fli-Lo Falcon, LLC v. Amazon.com, Inc.*, 97 F.4th 1190, 1193 (9th Cir. 2024) (citing 9 U.S.C. § 2); *New Prime Inc. v. Oliveira*, 586 U.S. 105, 110 (2019) (“[T]he Act applies only when the

1 certain cases from this grant of authority.²¹ Section 2 itself also imposes two limitations on its
 2 scope. First, the FAA does not require arbitration if a generally applicable state-law contract
 3 defense applies.²² Second, the FAA does not apply to controversies that do not arise out of the
 4 contract containing the arbitration agreement.²³ Because questions about FAA coverage go to
 5 the court's authority to compel arbitration, they must be resolved by the court.²⁴

6 The FAA similarly prohibits courts from compelling arbitration if no arbitration
 7 agreement was formed.²⁵ The Supreme Court has characterized Section 2 of the act as requiring
 8 a court to decide the issue of contract formation before it can order arbitration.²⁶ And as the
 9

10 parties' agreement to arbitrate is set forth as a 'written provision in any maritime transaction or a
 11 contract evidencing a transaction involving commerce.'").

12 ²¹ See, e.g., 9 U.S.C. § 1.

13 ²² See, e.g., *Kilgore v. KeyBank, Nat'l Ass'n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (quoting
 14 *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996)) ("[G]enerally applicable contract
 15 defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration
 16 agreements without contravening § 2.").

17 ²³ 9 U.S.C. § 2; *Johnson v. Walmart Inc.*, 57 F.4th 677, 681 (9th Cir. 2023) ("Section 2 of the
 18 FAA requires arbitration of controversies that *arise out of* a contract containing a valid,
 19 enforceable arbitration provision." (emphasis added)); *Davitashvili v. Grubhub Inc.*, 131 F.4th
 20 109, 119–20 (2d Cir. 2025) (holding that Section 2's arising-out-of language limits the FAA's
 21 scope to controversies that were caused by the contractual relationship).

22 ²⁴ *New Prime*, 586 U.S. at 111–12 ("[A] court should decide for itself" whether the FAA applies
 23 because "to invoke its statutory powers under §§ 3 and 4 to stay litigation and compel arbitration
 24 according to a contract's terms, a court must first know whether the contract itself falls within or
 25 beyond the boundaries of §§ 1 and 2."); *Oliveira*, 857 F.3d at 14 ("The question of the court's
 26 authority to act under the FAA is an 'antecedent determination' for the district court to make
 before it can compel arbitration under the Act."). But FAA coverage is very broad and often not
 at issue. So the arbitrability inquiry is typically phrased as "whether a valid agreement to
 arbitrate exists and, if it does, whether the agreement encompasses the dispute at issue." See
Chiron Corp., 207 F.3d at 1130.

27 ²⁵ *Munro v. Univ. of S. Cal.*, 896 F.3d 1088, 1092 (9th Cir. 2018) ("We cannot, of course, compel
 28 arbitration in the absence of an agreement to arbitrate; to do so would be to defeat 'the FAA's
 29 primary purpose of ensuring that private agreements to arbitrate are enforced according to their
 30 terms.'").

31 ²⁶ See *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019) (citing 9 U.S.C.
 32 § 2) (citing Section 2 for the position that "before referring a dispute to an arbitrator, the court

1 Ninth Circuit has noted, Section 4 of the FAA similarly requires a court to order arbitration only
 2 if the court is satisfied that a contract was formed.²⁷

3 In contrast, the FAA is silent as to issues of arbitrability—that is, whether an agreement
 4 (not the FAA itself) covers a particular controversy.²⁸ So as long as the FAA covers the
 5 dispute,²⁹ the Supreme Court has endorsed using the FAA to compel even obviously inapplicable
 6 disputes to an arbitrator to decide arbitrability.³⁰ It reasoned that the FAA covers such cases and
 7 nothing in the FAA forbids it.³¹

8 The practical effect of these principles is that deciding whether to compel a controversy
 9 to arbitration can involve three “distinct” but easily conflated inquiries:³² FAA coverage,
 10 contract formation, and arbitrability. FAA coverage concerns whether Section 2 of the FAA
 11 covers the dispute and empowers the court to compel arbitration.³³ Contract formation asks
 12

13 determines whether a valid arbitration agreement exists”); *see also Granite Rock Co. v. Int'l Bhd.*
 14 *of Teamsters*, 561 U.S. 287, 296 (2010) (“It is similarly well settled that where the dispute at
 issue concerns contract formation, the dispute is generally for courts to decide.”).

15 ²⁷ *Caremark, LLC v. Chickasaw Nation*, 43 F.4th 1021, 1030 (9th Cir. 2022) (citing 9 U.S.C.
 16 § 4) (“[P]reserving for the courts the contract-formation question comports with the requirement
 17 in section 4 of the FAA that courts enforce arbitration agreements only ‘upon being satisfied that
 18 the making of the agreement for arbitration . . . is not in issue.’”); *Johnson v. Cont'l Fin. Co., LLC*, 131 F.4th 169, 175 (4th Cir. 2025) (“It would defy the plain text of the FAA” and Section 4
 19 “to enforce an arbitration clause without first determining that the contract in which it is
 contained was properly formed.”); *Rowland v. Sandy Morris Fin. & Est. Plan. Servs., LLC*, 993
 F.3d 253, 258 (4th Cir. 2021) (“Section 4 of the FAA has made clear that it is up to courts to
 determine whether a contract has been formed.”).

20 ²⁸ See *Henry Schein*, 586 U.S at 65, 69.

21 ²⁹ *New Prime*, 586 U.S. at 112.

22 ³⁰ *Henry Schein*, 586 U.S at 69–70.

23 ³¹ See *id.* (“The short answer is that the Act contains no ‘wholly groundless’ exception, and we
 may not engraft our own exceptions onto the statutory text.”).

³² *In re Van Dusen*, 654 F.3d at 844.

³³ *Id.*; *New Prime*, 586 U.S. at 112.

1 whether the parties formed a valid contract under state law and whether any defense prevents
 2 enforcement.³⁴ Both contract formation and FAA coverage are questions for the court under the
 3 FAA's text.³⁵ Arbitrability refers to whether a dispute is within the scope of the arbitration
 4 agreement's terms;³⁶ if there is a valid delegation clause, arbitrability is a question for the
 5 arbitrator.³⁷

6 Airbnb's effort to compel Tao to arbitrate his claims gets tripped up at the first and
 7 second inquiries: whether the parties formed a valid contract to arbitrate this dispute and whether
 8 the FAA requires this court to enforce it here. Ninth Circuit precedent and the absurd-results
 9 canon counsel that Tao and Airbnb did not form an arbitration agreement over this wholly
 10 unrelated dispute. Even if they did, Section 2's arising-out-of language exempts this dispute
 11 from FAA coverage. Because neither of these issues involves arbitrability,³⁸ Airbnb's delegation
 12 clause is not implicated.

13 **B. The absurd-results canon of contract construction prevents this court from finding
 14 that an agreement to arbitrate this dispute was formed.**

15 Tao's first challenge to Airbnb's arbitration bid is a contract-formation one. He argues
 16 that the agreement's terms are unconscionable because the "breadth and scope of what Airbnb is
 17 requesting" is "unreasonable[]" as "any consumer who registers an account on Airbnb would, in
 18 perpetuity, be bound by Airbnb's terms of engagement regarding any dispute at any time

19

20³⁴ See, e.g., *Revitch v. DIRECTV, LLC*, 977 F.3d 713, 716 (9th Cir. 2020).

21³⁵ *Caremark*, 43 F.4th at 1030; *New Prime*, 586 U.S. at 112.

22³⁶ *Schein*, 586 U.S. at 65.

23³⁷ *Id.*

³⁸ See, e.g., *Oliveira*, 857 F.3d at 15 ("[W]e reject" the "premise . . . that the issue of [the FAA's] applicability is a question of arbitrability.").

1 regarding any matters that even tangentially involve Airbnb.”³⁹ While he somewhat inartfully
 2 frames this argument as one of unconscionability, the Ninth Circuit has used similar reasoning to
 3 conclude that parties do not form arbitration agreements under the absurd-results canon.⁴⁰ That
 4 rule of contract construction provides that “a contract must be so interpreted as to give effect to
 5 the mutual intention of the parties as it existed at the time of contracting,” and courts “normally
 6 determine the mutual intention of the parties from the written terms of the contract alone, so long
 7 as the contract language is clear and explicit and does not lead to absurd results.”⁴¹

8 In *Perez v. Discover Bank*, the Ninth Circuit applied the absurd-results canon to find that
 9 an agreement to arbitrate had not been formed between a loan applicant and a bank that had
 10 acquired the rights to a years-earlier loan agreement.⁴² Iliana Perez signed a loan agreement with
 11 Citibank that included an arbitration agreement.⁴³ That agreement covered any claims “arising
 12 out of or in connection with the loan” against Citibank or its successor.⁴⁴ It also delegated the
 13
 14
 15

³⁹ ECF No. 17 at 5–6.

⁴⁰ See *Revitch*, 977 F.3d at 718–19.

⁴¹ *Perez v. Discover Bank*, 74 F.4th 1003, 1010 (9th Cir. 2023) (quoting *Revitch*, 977 F.3d at 717) (applying California law). Airbnb asserts that California law applies because of the agreement’s choice-of-law provision, it is unclear whether Tao contests that. But I need not answer that question because the result is the same under the law of California or Nevada. See *Reno Club v. Young Inv. Co.*, 182 P.2d 1011, 1017 (Nev. 1947) (“A contract should not be construed so as to lead to an absurd result.”); *Nev. State Educ. Ass’n v. Clark Cnty. Educ. Ass’n*, 482 P.3d 665, 673 (Nev. 2021) (“[A]n interpretation is not reasonable if it makes any contract provisions meaningless, or if it leads to an absurd result.”); *Airbnb, Inc. v. Rice*, 518 P.3d 88, 94 (Nev. 2022) (Stiglich, J., dissenting) (“Airbnb’s argument that the Terms of Service applies to this dispute is unreasonable and would lead to an absurd result.”).

⁴² *Perez*, 74 F.4th at 1006.

⁴³ *Id.*

⁴⁴ *Id.*

1 question of arbitrability to an arbitrator.⁴⁵ Discover Bank then acquired the Citibank loan.⁴⁶
 2 Seven years later, Perez coincidentally sought a loan from Discover Bank, which the bank denied
 3 based on her undocumented status.⁴⁷ So Perez brought several civil-rights claims against
 4 Discover Bank.⁴⁸ The bank moved to compel arbitration based on the Citibank loan's arbitration
 5 agreement, which extended to Citibank's successor.⁴⁹

6 The Ninth Circuit found that the parties did not form an agreement to arbitrate the
 7 Discover Bank dispute.⁵⁰ It reasoned that, when she signed the Citibank agreement, "Perez
 8 could not reasonably have expected that she would be forced to arbitrate the unrelated claims
 9 that Discover [Bank] discriminated against her eight years later when it denied her application
 10 for a new, distinct loan."⁵¹ Because compelling arbitration of an unrelated dispute with a
 11 separate bank based on a loan agreement signed several years earlier created an absurd result and
 12 was outside Perez's reasonable expectations, the Ninth Circuit found that the absurd-results
 13 canon prevented such an agreement from being enforced.⁵²

14 I find that *Perez* controls here. Tao agreed to Airbnb's terms of service before leasing his
 15 home to Murphy and for reasons wholly unrelated to this dispute. Like Perez, Tao could not
 16 have anticipated that creating his Airbnb accounts would bind him to arbitration for a claim
 17 accruing later and arising from another person's conduct unrelated to his own accounts. The
 18

19⁴⁵ *Id.*

20⁴⁶ *Id.*

21⁴⁷ *Id.* at 1007.

22⁴⁸ *Id.*

23⁴⁹ *Id.*

⁵⁰ *Id.* at 1010.

⁵¹ *Id.* (cleaned up).

⁵² *Id.* at 1010–11.

1 absurd-results canon precludes a finding that Tao and Airbnb formed an arbitration agreement
 2 for this dispute.

3 As no agreement to arbitrate this dispute was formed, the delegation clause in Airbnb's
 4 terms of service has no effect. The "court must resolve any challenge that an agreement to
 5 arbitrate was never formed, even in the presence of a delegation clause" and "resolve any
 6 challenge directed specifically to the enforceability of the delegation clause before compelling
 7 arbitration of any remaining gateway issues of arbitrability."⁵³ Because Tao and Airbnb didn't
 8 form an agreement to arbitrate Tao's claims arising from Murphy's unauthorized rental use of
 9 Tao's property, that arbitration agreement does not bind Tao to arbitrate these claims or require
 10 this court to delegate any question to an arbitrator.

11 **C. The FAA does not authorize this court to compel arbitration here because
 12 there is no causal nexus between the arbitration-clause-containing contract
 13 and this dispute.**

14 Even if this court were to find that an agreement to arbitrate this dispute was formed, this
 15 court lacks the power to enforce it because the agreement falls outside the coverage of the FAA.
 16 Section 2 of the act qualifies that a controversy must "aris[e] out of" the arbitration-clause-
 17 containing contract for the FAA to empower the court to enforce the arbitration provision.⁵⁴ And
 18 "[w]hile a court's authority under the [FAA] to compel arbitration may be considerable, it isn't
 19 unconditional."⁵⁵ "[Sections] 1 and 2 [of the FAA] define the field in which Congress was
 20

21 ⁵³ *Caremark*, 43 F.4th at 1030.

22 ⁵⁴ 9 U.S.C. § 2; *Davitashvili*, 131 F.4th at 119–20; *Johnson*, 57 F.4th at 681; *Calderon v. Sixt Rent a Car, LLC*, 5 F.4th 1204, 1212 (11th Cir. 2021) ("The Act governs an arbitration agreement only to the extent that it compels arbitration of 'controvers[ies]' that 'aris[e] out of' the 'contract' containing the arbitration agreement.").

23 ⁵⁵ *New Prime*, 586 U.S. at 110.

1 legislating,”⁵⁶ and the court thus lacks authority under Section 3 and 4 to compel to arbitration
 2 disputes that fall outside Section 1 and 2.⁵⁷

3 **1. For the FAA to apply and empower the court to compel arbitration, the dispute
 4 must be causally related to the contract that contains the arbitration agreement.**

5 Based on the language of Section 2 of the FAA, at least one judge in the Ninth Circuit
 6 has theorized that “when the dispute is wholly unrelated to the contract . . . federal courts have
 7 no power to compel arbitration.”⁵⁸ Judges in other circuits have also adopted that view,⁵⁹ and
 8 their recent opinions have shone a spotlight on Section 2’s arising-out-of requirement and its
 9 limitations on the FAA’s reach.

10 In *Davitashvili v. Grubhub, Inc.*, for example, the Second Circuit considered whether
 11 app-based food-delivery companies could compel restaurant customers to arbitrate their class-
 12 action antitrust claims that Grubhub, Uber Eats, and Postmates “fixed restaurant meal prices by
 13 entering into [no-price competition clauses] in which the restaurants agreed not to charge lower

14 ⁵⁶ *Bernhardt v. Polygraphic Co. of Am.*, 350 U.S. 198, 201 (1956).

15 ⁵⁷ *New Prime*, 586 U.S. at 110–12; *In re Van Dusen*, 654 F.3d at 844; *Revitch*, 977 F.3d at 723–
 16 24 (O’Scannlain, J., concurring) (citing David Horton, *Infinite Arbitration Clauses*, 168 U. Pa. L. Rev. 633, 678–83 (2020)).

17 ⁵⁸ *Revitch*, 977 F.3d at 723–24 (9th Cir. 2020) (O’Scannlain, J., concurring) (citing David
 18 Horton, *Infinite Arbitration Clauses*, 168 U. Pa. L. Rev. 633, 678–83 (2020)).

19 ⁵⁹ *Davitashvili*, 131 F.4th at 119–20 (holding that “Grubhub’s arbitration clause does not apply to
 20 Plaintiffs’ antitrust claims against Grubhub because Plaintiffs’ antitrust claims do not arise out of
 21 the Terms of Use”); *id.* at 121 (Pérez, J., concurring) (“[T]he panel agrees unanimously on the
 22 principle that Section 2 of the [FAA] applies only to contracting parties’ agreements to arbitrate
 23 claims ‘arising out of such contract or transaction’ . . . one consequence of that principle is that
 the FAA does not countenance motions to compel arbitration of claims that lack a requisite
 ‘nexus’ to the contract containing the arbitration clause.”); *Calderon*, 5 F.4th at 1212–14. The
 Ninth Circuit has made similar suggestions. See *Johnson*, 57 F.4th at 681 (“Section 2 of the
 FAA requires arbitration of controversies that *arise out of* a contract containing a valid,
 enforceable arbitration provision.” (emphasis added)); see also *Revitch*, 977 F.3d at 723–24
 (O’Scannlain, J., concurring) (citing David Horton, *Infinite Arbitration Clauses*, 168 U. Pa. L.
 Rev. 633, 678–83 (2020)); *Perez*, 74 F.4th at 1011.

1 prices off-platform,” allegedly causing the restaurants’ non-app-ordering customers “to pay
 2 artificially high prices” for their meals.⁶⁰ The platforms moved to compel arbitration, arguing
 3 that the plaintiffs had accounts with them, and the terms of use for those accounts contained
 4 broad arbitration provisions.⁶¹ The district court denied the motion, holding *inter alia* that the
 5 FAA did not compel arbitration of these antitrust claims because they were “completely
 6 unrelated to” the class plaintiffs’ “use of defendants’ platforms” and “[t]he fact that [they] at
 7 some time used some of the defendants’ platforms is purely coincidental. . . .”⁶² The Second
 8 Circuit affirmed as to Grubhub, reasoning that “[p]laintiffs who never used Grubhub are just as
 9 much class members as those who have.”⁶³ A *Davitashvili* concurrence succinctly summarizes
 10 this principled result this way:

11 The Court appropriately rejects what amounts to an attempt by
 12 Grubhub to funnel every conceivable claim against it into
 13 arbitration, no matter its content. The principle that controls this
 14 case is recognized by all three panel members: **“The phrase
 15 ‘arising out of’ in Section 2 of the FAA establishes a nexus
 16 limitation on which disputes are subject to the FAA,” beyond
 17 which the FAA “will not apply to any attempts to send that
 18 dispute to arbitration.”**⁶⁴

18⁶⁰ *Davitashvili*, 131 F.4th 114.

19⁶¹ *Id.*

20⁶² *Davitashvili v. Grubhub Inc.*, 2023 WL 2537777, at *10 (S.D.N.Y. Mar. 16, 2023), *aff’d in part, rev’d in part and remanded*, 131 F.4th 109 (2d Cir. 2025).

21⁶³ *Davitashvili*, 131 F.4th 120. The panel reversed as to Uber and Postmates because their
 22 accounts’ terms of use contained a delegation clause, and the panel found that the plaintiffs failed
 23 to challenge those clauses “with sufficient specificity” by raising their challenge only in a
 footnote. *Id.* at 118–19. So the panel held that the arbitrability of the claims against Uber and
 Postmates “should be sent to an arbitrator to determine” *Id.* at 119.

24⁶⁴ *Id.* at 124 (Pérez, J., concurring) (cleaned up) (emphasis added).

1 Courts increasingly read Section 2’s arising-out-of language and any nexus limitation to
 2 require a causal relationship between the arbitration-clause-containing contract and the dispute.
 3 As one scholar noted, the drafters of the FAA would have understood “arising out of” to mean
 4 “proceeding, issuing, or springing from,” all of which imply some sort of causal nexus between
 5 the contract and the dispute.⁶⁵ The Supreme Court has recently acknowledged in dicta that “the
 6 ‘arising out of’ language” in Section 2 “normally refers to a causal relationship,”⁶⁶ and so did the
 7 Second Circuit in *Davitashvili*.⁶⁷ The Eleventh Circuit has similarly interpreted “arising out of”
 8 to mean “the dispute in question was an immediate, foreseeable result of the performance of
 9 contractual duties.”⁶⁸

10 So courts have rejected Airbnb’s premise that anything remotely related to it “arises out
 11 of” a plaintiff’s Airbnb account’s terms of service. For example, in *Peterson v. Devita*, Andrew
 12 Peterson sued Airbnb after a railing gave way, injuring Peterson at a home that his friend rented
 13 through the Airbnb platform.⁶⁹ Airbnb moved to compel arbitration because Peterson happened
 14 to have his own Airbnb account.⁷⁰ But the Illinois Appellate Court refused to compel arbitration
 15 based only on “Peterson happen[ing] to be at the property as a guest of someone who booked

16
 17
 18⁶⁵ See David Horton, *Accidental Arbitration*, 102 Wash. U.L. Rev. 1381, 1419 (2025) (cleaned
 up) (analyzing dictionaries and authorities from the time of the FAA’s enactment).

19⁶⁶ *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 652 n.4 (2022) (citing *Ford Motor Co. v.*
Mont. Eighth Jud. Dist. Ct., 592 U.S. 351, 361 (2021)); *Coeur D’Alene Tribe of Id. v. Hammond*,
 20 384 F.3d 674, 683 (9th Cir. 2004) (“[O]ur precedent requires that we give great weight to dicta
 of the Supreme Court.”).

21⁶⁷ *Davitashvili*, 131 F.4th at 119–20 (“[C]ontroversies that ‘arise out of’ the parties’ contractual
 22 relationship” are “controversies that were ‘cause[d]’ by the relationship.”).

23⁶⁸ *Calderon*, 5 F.4th at 1213.

⁶⁹ *Peterson v. Devita*, 237 N.E.3d 1010, 1013 (Ill. App. Ct. 2023).

⁷⁰ *Id.*

1 through Airbnb” and “fortuit[ously]” also happening to have an Airbnb account.⁷¹ Nothing
 2 connected his claim to his use of Airbnb—Peterson was not a party or participant in the booking
 3 of the property.⁷² Rather, only “the fortuity of [Peterson] having created an account” connected
 4 him to Airbnb, which was insufficient to show that the claim arose out of Airbnb’s terms of
 5 service, and enforcement would lead to “absurd consequences.”⁷³

6 Airbnb sees it differently. It contends that the “Ninth Circuit interprets the ‘arising out of’
 7 or relating to’ language as broad and far-reaching, compelling arbitration whenever a claim has
 8 any factual nexus to the agreement” and that Tao’s “allegations necessarily ‘relate to’ Airbnb’s
 9 terms because they challenge Airbnb’s role in connection with platform use.”⁷⁴ But Airbnb
 10 conflates *the scope* of the agreement with *the application of Section 2 of the FAA*, which limits
 11 the court’s power to enforce overbroad arbitration agreements⁷⁵ and lacks such “relate to”
 12 language.⁷⁶

13 The cases Airbnb cites to do not counsel a different result regarding the “arising out of”
 14 language in Section 2. The first case Airbnb cites, *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*,
 15 didn’t deal with a controversy unrelated to the contract but whether, under the parties’
 16 agreement’s terms, an arbitrator or the court needed to decide whether a res judicata defense
 17 applied.⁷⁷ Airbnb’s second case, *Simula, Inc. v. Autoliv, Inc.*, interpreted the language “arising in

19⁷¹ *Id.* at 1016–17.

20⁷² *Id.* at 1017–18.

21⁷³ *See id.*

22⁷⁴ ECF No. 36 at 3 (cleaned up).

23⁷⁵ *See Revitch*, 977 F.3d at 723–24 (O’Scannlain, J., concurring) (citing David Horton, *Infinite Arbitration Clauses*, 168 U. Pa. L. Rev. 633, 678–83 (2020)); *Davitashvili*, 131 F.4th at 119–20.

⁷⁶ *See* 9 U.S.C. § 2.

⁷⁷ *See Chiron Corp.*, 207 F.3d at 1132.

1 connection with” in an arbitration agreement,⁷⁸ concluding that the language reached “every
 2 dispute between the parties having a significant relationship to the contract and all disputes
 3 having their origin or genesis in the contract.”⁷⁹ But the construction of a contract is distinct
 4 from application of the FAA—to which the canons of statutory construction apply.⁸⁰ And the
 5 *Simula* court acknowledged that “arising in connection with” is a broader phrase than “arising
 6 out of,” and that ““arising out of’ . . . seem[s] to limit the clause to disputes concerning the
 7 contract itself.”⁸¹ So Airbnb’s cases do not support the conclusion that a causal relationship is
 8 not required for Section 2 to apply to this dispute.

9

10 **2. *There is no causal nexus between Tao’s agreement with Airbnb and***
this dispute.

11 A causal nexus is absent here because the controversy Airbnb seeks to arbitrate has no
 12 connection to the terms of service that Tao agreed to when he signed up for an Airbnb account.
 13 Assuming Tao’s allegations are true, Murphy still would have posted the property on Airbnb
 14 using Murphy’s own account, regardless of whether Tao had his own contractual relationship
 15 with Airbnb.

16 The Nevada Supreme Court found a causal relationship similarly lacking in *Airbnb, Inc.*
 17 *v. Rice*. Someone shot a gun into a crowd, killing Raheem Rice and injuring Bryan Lovett, who
 18 were walking to a house party at a property booked through Airbnb.⁸² When Airbnb was sued
 19

20 ⁷⁸ See *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 721 (9th Cir. 1999).

21 ⁷⁹ *Id.*

22 ⁸⁰ *In re Saldana*, 122 F.4th 333, 341 (9th Cir. 2024) (“In construing a statute, we begin with the plain words of the statute, employing the familiar canons of statutory construction.” (cleaned up)).

23 ⁸¹ *Simula*, 175 F.3d at 721.

82 *Rice*, 518 P.3d at 89.

1 for wrongful death and personal injury,⁸³ it moved to compel arbitration because the plaintiffs
 2 happened to have Airbnb accounts through which they'd agreed to Airbnb's terms of service.⁸⁴
 3 The plaintiffs argued that the dispute did not arise out of Airbnb's terms of service because the
 4 plaintiffs "did not book the Airbnb rental where the shooting occurred" and "the record [did] not
 5 indicate [they] ever utilized Airbnb's services at all."⁸⁵ The en banc Nevada Supreme Court
 6 agreed that "the dispute . . . did not arise out of a contract between the parties" because "[t]he
 7 facts underlying [the] wrongful death action have no relation to [the plaintiffs'] use of Airbnb's
 8 services or platform" and "do not arise out of Airbnb's duties to [the plaintiffs] by virtue of their
 9 agreements to Airbnb's Terms of Service."⁸⁶

10 The instant dispute similarly did not arise out of a contract between the plaintiff and
 11 Airbnb because the facts of this case have no relation to Tao's use of Airbnb's services or
 12 platform. The fact that Tao has any agreement with Airbnb is purely fortuitous.⁸⁷ So I find that
 13 Tao's agreement with Airbnb falls outside the reach of the FAA. As a result, the FAA does not
 14 empower this court to compel arbitration of this dispute.

20⁸³ *Id.*

21⁸⁴ *Id.* at 89–90.

22⁸⁵ *Id.*

23⁸⁶ *Id.* at 91. Despite these observations, the majority of the en banc court in *Rice* nevertheless found the agreement's delegation clause enforceable and remanded for the trial court to delegate the arbitrability question to an arbitrator. *Id.* at 92.

⁸⁷ See also *Peterson*, 237 N.E.3d at 1017 ("A contract—and not fate—dictates arbitrability.").

1 **D. Because the agreement falls outside the reach of the FAA, this court need not**
 2 **enforce the delegation clause.**

3 Airbnb insists that any questions about whether to send this case to arbitration must be
 4 decided by an arbitrator because of the delegation clause in its terms of service.⁸⁸ In its view, a
 5 valid delegation clause “ends the inquiry” under the United States Supreme Court’s decision in
 6 *Henry Schein, Inc. v. Archer & White Sales, Inc.*, which requires courts to almost unquestionably
 7 enforce delegation provisions.⁸⁹ In making this argument, however, Airbnb conflates
 8 arbitrability (which its terms of service delegate to an arbitrator) with FAA coverage (which is a
 9 question for the court). Because this controversy is not governed by the FAA, this court also
 10 lacks the power to enforce the delegation clause in Airbnb’s terms of service.⁹⁰

11 **I. Supreme Court precedent does not require the court to delegate to an arbitrator**
 12 **disputes that fall outside the coverage of the FAA.**

13 The instant case highlights the tension between the United States Supreme Court’s 2019
 14 decision in *Henry Schein* and Section 2’s “arising out of” language, which deprives federal
 15 courts of the power to compel to arbitration disputes that lack a nexus to the contract that
 16 contains such a provision. The High Court made clear in *Henry Schein* that the FAA does not
 17 authorize courts to disregard delegation clauses even if the argument for arbitration is wholly
 18 groundless.⁹¹ In that case, a dental-equipment distributor and a dental-equipment manufacturer
 19 entered into a contract that required arbitration of any claim arising out of or relating to that

20 ⁸⁸ ECF No. 9 at 8–10.

21 ⁸⁹ ECF No. 36 at 4 (citing *Henry Schein*, 586 U.S. 63).

22 ⁹⁰ *In re Van Dusen*, 654 F.3d at 844; *New Prime*, 586 U.S. at 110 (noting that the authority to
 23 compel arbitration “doesn’t extend to all private contracts, no matter how emphatically [the
 contract] may express a preference for arbitration”).

24 ⁹¹ *Henry Schein*, 586 U.S. at 71.

1 contract but exempted injunctive-relief claims.⁹² It also contained a delegation clause that
 2 authorized the arbitrator to make any threshold determinations on arbitrability.⁹³ The
 3 relationship eventually fell apart and the distributor sued for injunctive relief under the antitrust
 4 laws.⁹⁴ When the manufacturer moved to compel arbitration on the threshold question of
 5 arbitrability, both the district court and the Fifth Circuit denied the motion, finding it “wholly
 6 groundless” because the plain language of the agreement excluded injunctive-relief claims from
 7 arbitration.⁹⁵

8 But the Supreme Court unanimously disagreed. As it explained, the FAA “contains no
 9 ‘wholly groundless’ exception,”⁹⁶ which federal courts had previously used to disregard
 10 delegation clauses when the argument for arbitration was meritless.⁹⁷ In the High Court’s view,
 11 federal courts “may not engraft [their] own exceptions onto the statutory text.”⁹⁸ Because “[t]he
 12 exception is inconsistent with the statutory text,” “[w]hen the parties’ contract delegates the
 13 arbitrability question to an arbitrator, the courts must respect the parties’ decision as embodied in
 14 the contract”⁹⁹ and, “[i]n those circumstances, a court possesses no power to decide the
 15 arbitrability issue.”¹⁰⁰

16 ⁹² *Id.* at 66.

17 ⁹³ *Id.*

18 ⁹⁴ *Id.*

19 ⁹⁵ *Id.* at 66–67.

20 ⁹⁶ *Id.* at 70.

21 ⁹⁷ *Id.* at 65 (“[E]ven when a contract delegates the arbitrability question to an arbitrator, some
 22 federal courts nonetheless will short-circuit the process and decide the arbitrability question
 23 themselves if the argument that the arbitration agreement applies to the particular dispute is
 24 ‘wholly groundless.’”).

25 ⁹⁸ *Id.* at 70.

26 ⁹⁹ *Id.* at 71.

27 ¹⁰⁰ *Id.* at 68.

1 A few days after *Henry Schein*, however, the United States Supreme Court announced in
 2 *New Prime Inc. v. Oliveira* that the question of whether a dispute or contract falls within the
 3 coverage of the FAA cannot be delegated to an arbitrator.¹⁰¹ In *New Prime*, an interstate
 4 trucking company's drivers brought a class action against the company for misclassifying them
 5 as independent contractors.¹⁰² The company moved to compel arbitration, arguing that an
 6 independent contractor does not fall within Section 1 of the FAA's exemption for transportation
 7 employees¹⁰³ and that the delegation clause in their contract meant that an arbitrator needed to
 8 determine whether their claims were covered by the FAA.¹⁰⁴

9 The Supreme Court rejected that argument. It noted that Sections 1 and 2 of the FAA
 10 "limit the scope of the court's powers under [Sections] 3 and 4" to compel arbitration.¹⁰⁵ So
 11 even if "[t]he parties' private agreement [is] crystal clear and require[s] arbitration of every
 12 question under the sun . . . that does not necessarily mean the Act authorizes a court to" compel a
 13 case to arbitration if it falls outside Section 1 and Section 2.¹⁰⁶ And a delegation clause is just
 14 another "type of arbitration agreement,"¹⁰⁷ so the court, and not an arbitrator, must determine
 15 whether that agreement falls within the FAA's coverage.¹⁰⁸ Thus, "a court may use [Sections] 3

16
 17 ¹⁰¹ *New Prime*, 586 U.S. at 112 ("So a court may use §§ 3 and 4 to enforce a delegation clause
 18 only if the clause appears in a "written provision in . . . a contract evidencing a transaction
 19 involving commerce" consistent with § 2. . . . In exactly the same way, the Act's severability
 principle applies only if the parties' arbitration agreement appears in a contract that falls within
 the field §§ 1 and 2 describe.").

20 ¹⁰² *Id.* at 108–09.

21 ¹⁰³ *Id.* at 109.

22 ¹⁰⁴ *Id.*

23 ¹⁰⁵ *Id.* at 110.

¹⁰⁶ *Id.* at 111.

¹⁰⁷ *Id.* at 112.

¹⁰⁸ *Id.*

1 and 4 to enforce a delegation clause only if the clause appears in a written provision in . . . a
 2 contract” that falls within Section 1 and 2.¹⁰⁹

3 **2. *The FAA does not require the court to enforce a delegation provision in a***
 4 ***contract unrelated to the dispute.***

5 Using logic similar to that in *New Prime*, numerous courts and scholars have concluded
 6 that *Henry Schein* does not—and cannot—require delegating to an arbitrator the determination of
 7 whether a controversy is causally related to the arbitration-clause-containing contract.¹¹⁰ Like
 8 the statutory exemptions of Section 1 at issue in *New Prime*, Section 2 qualifies that the
 9 controversy must “aris[e] out of” that contract for the FAA to empower an arbitration
 10 provision.¹¹¹ For this reason, several courts have refused to enforce delegation clauses when the
 11 controversy “lacks what [*Henry*] *Schein* presupposes,”¹¹² that the controversy arises out of the
 12 contract and has some sort of nexus or causal relationship to it.¹¹³ Yet other courts interpret

13
 14 ¹⁰⁹ *Id.* (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 402 (1967))
 15 (cleaned up) (“We acknowledged as much some time ago, explaining that, before invoking the
 severability principle, a court should “determine[] that the contract in question is within the
 coverage of the Arbitration Act.”).

16 ¹¹⁰ See *Moritz v. Universal City Studios LLC*, 268 Cal. Rptr. 3d 467, 475–76 (Cal. Ct. App.
 17 2020); see also *Perez*, 74 F.4th at 1011 (citing *Moritz*, 268 Cal. Rptr. 3d at 475–76); David
 18 Horton, *Accidental Arbitration*, 102 Wash. U.L. Rev. 1381, 1430 (2025) (“[W]hen a defendant
 19 seeks to enforce a delegation clause and the plaintiff counters that there is no connection between
 their allegations and the container contract, the threshold issue is not the ambit of the arbitration
 clause; rather, it is the coverage of the FAA. Under the contractual nexus theory, the first step in
 the analysis is to decide whether a claim “aris[es] out of” the container contract within the
 meaning of section 2. And this means that the relevant Court decision is not *Henry Schein*.
 Instead, it is *New Prime Inc. v. Oliveira*, which, as noted, explained that arbitrators cannot rule
 on ‘whether the contract itself falls within or beyond the boundaries of ... [section] 2.’ Thus,
 21 judges must decide as a preliminary matter whether the FAA applies, setting the stage for
 resolving other issues about the delegation provision.”).

22 ¹¹¹ 9 U.S.C. § 2; *Davitashvili*, 131 F.4th at 120; *Johnson*, 57 F.4th at 681.

23 ¹¹² *Perez*, 74 F.4th at 1011 (quoting *Moritz*, 268 Cal. Rptr. 3d at 475–76).

24 ¹¹³ See, e.g., *Moritz*, 268 Cal. Rptr. 3d at 475–76; see also *Peterson*, 237 N.E.3d at 1017; *Perez*,
 25 74 F.4th at 1011 (citing *Moritz*, 268 Cal. Rptr. 3d at 475–76) (rejecting the argument that

1 *Henry Schein* to nonetheless require delegation in that situation.¹¹⁴ Indeed, the Nevada Supreme
 2 Court’s opinion in *Rice* split along these lines.

3 Airbnb relies heavily on the majority opinion in *Rice*. As mentioned *supra*, in *Rice*, two
 4 guests were injured and killed on their way to an Airbnb rental.¹¹⁵ Airbnb moved to compel
 5 arbitration because those guests happened to have their own Airbnb accounts and the accounts’
 6 terms of service contained an arbitration agreement and a delegation clause.¹¹⁶ A majority of the
 7 Nevada Supreme Court enforced the delegation clause despite finding that the controversy was
 8 causally unrelated to the plaintiffs’ accounts.¹¹⁷ It reasoned that *Henry Schein* “held that, when a
 9 contract delegates the arbitrability question to the arbitrator, a court has no authority to decide
 10 whether the arbitration agreement applies to the dispute, even where the argument for arbitration
 11 is wholly groundless.”¹¹⁸

12 In dissent, Justice Stiglich wrote that the majority’s opinion in *Rice* “both misreads *Henry*
 13 *Schein* and will lead to absurd consequences in the future.”¹¹⁹ So she instead would “have
 14 elected to follow the path tread by” the California Court of Appeal in *Moritz v. Universal City*
 15 *Studios LLC*, which directly addressed the tension between *Henry Schein* and Section 2’s arising-
 16 out-of language.¹²⁰ As the *Moritz* court observed, while *Henry Schein* held that a court

17
 18 delegation clause controlled because “this case lacks what ‘[*Henry*] *Schein* presupposes’—’a
 19 controversy thereafter arising out of a contract to arbitrate’” (cleaned up).

20¹¹⁴ See, e.g., *Rice*, 518 P.3d at 92.

21¹¹⁵ *Id.* at 89–90.

22¹¹⁶ *Id.*

23¹¹⁷ *Id.* at 92.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 93 (Stiglich, J., dissenting).

¹²⁰ *Id.* (Stiglich, J., dissenting).

1 “possesses no power to decide the arbitrability issue” if the parties delegated arbitrability,¹²¹
2 “[*Henry Schein*] expressly understood that the [FAA] requires enforcement of arbitration clauses
3 with respect to disputes ‘thereafter arising out of such contract.’”¹²² But, as Justice Stiglich
4 opined, “a perpetual obligation to arbitrate any conceivable claim” is “plainly inconsistent with
5 the FAA’s explicit relatedness requirement.”¹²³ So *Henry Schein* and “[t]he FAA require[] no
6 enforcement of an arbitration provision” or any delegation clause “with respect to disputes
7 unrelated to the contract in which the provision appears,” she concluded.¹²⁴

I find that Justice Stiglich’s dissent and the *Moritz* opinion offer the right approach to delegation clauses in contracts that are unrelated to the dispute before the court. *New Prime* held that FAA coverage is a question for the court,¹²⁵ and whether a dispute “arises out of” a contract is an issue of FAA coverage.¹²⁶ The *Rice* majority and similar cases too loosely treat this inquiry as one of arbitrability. FAA coverage is a “distinct inquiry” from arbitrability, and refusing to enforce a delegation clause based on a finding that the agreement is not covered by the FAA is not an arbitrability determination.¹²⁷ As the Ninth Circuit said in *In re Van Dusen*, “private

¹²¹ *Schein*, 586 U.S. at 68.

¹²² *Rice*, 518 P.3d at 93 (Stiglich, J., dissenting) (quoting *Moritz*, 268 Cal. Rptr. at 475).

¹²³ *Id.* (Stiglich, J., dissenting) (quoting *Moritz*, 268 Cal. Rptr. at 475).

¹²⁴ *Id.* (Stiglich, J., dissenting) (quoting *Moritz*, 268 Cal. Rptr. at 475–76); see also *Perez*, 74 F.4th at 1011 (citing *Moritz* with approval).

¹²⁵ *New Prime*, 586 U.S. at 111–12.

¹²⁶ See 9 U.S.C. § 2.

¹²⁷ *In re Van Dusen*, 654 F.3d at 844 (“[W]hatever the contracting parties may or may not have agreed upon is a distinct inquiry from whether the FAA confers authority on the district court to compel arbitration. [The Supreme Court] has never indicated that parties may delegate this determination to an arbitrator in the first instance; on the contrary, it has affirmed that, when confronted with an arbitration clause, the district court must first consider whether the agreement at issue is of the kind covered by the FAA.”); *Oliveira*, 857 F.3d at 14 (“[T]he court’s authority to act under the FAA is an ‘antecedent determination’” from compelling arbitration.); *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 71 (2010) (“If a party challenges the validity under § 2 of

1 contracting parties cannot, through the insertion of a delegation clause, confer authority upon a
 2 district court that Congress chose to withhold.”¹²⁸

3 *Moritz* and the *Rice* dissent are consistent with Section 2 and binding precedent. In
 4 *Henry Schein*, there was no doubt that there was a causal connection between the controversy
 5 and the clause-containing contract—the argument for arbitrability was just purportedly
 6 frivolous.¹²⁹ But *Henry Schein* did not address whether a delegation clause could delegate the
 7 question of whether a dispute arises out of the contract under Section 2. Interpreting *Henry*
 8 *Schein* as to require delegation without exception would run afoul of the Supreme Court’s
 9 admonition in *New Prime* that “before invoking the severability principle” and enforcing a
 10 delegation clause, the “court should “determine[] that the contract in question is within the
 11 coverage of the [FAA].”¹³⁰ This approach is also congruent with the Ninth Circuit’s observation
 12 in *Perez* that delegation clauses in cases involving unrelated disputes “lack what [*Henry*] *Schein*
 13 presupposes—a controversy thereafter arising out of a contract to arbitrate.”¹³¹

14 So I find that Airbnb’s delegation clause is not enforceable here. Because Tao’s
 15 agreement with Airbnb is unrelated to this dispute, it is not covered by the FAA. So this court is
 16 not empowered by the FAA to enforce either the arbitration provision or the delegation clause.

17
 18
 19
 20 the precise agreement to arbitrate at issue, the federal court must consider the challenge before
 21 ordering compliance with that agreement under § 4.”).

22¹²⁸ *In re Van Dusen*, 654 F.3d at 844.

23¹²⁹ See *Henry Schein*, 586 U.S. at 65–67.

¹³⁰ *New Prime*, 586 U.S. at 112.

¹³¹ *Perez*, 74 F.4th at 1011 (cleaned up).

Conclusion

IT IS THEREFORE ORDERED that Airbnb's motion to compel arbitration [ECF No. 9]

is DENIED.

U.S. District Judge Jennifer A. Dorsey
December 12, 2025